IN THE HIGH COURT OF UTTARANCHAL AT NTINITAL.

Chapter VIII, Rule 32 (2) (b)
Description of Case.

Civil W.P. No. 468 (M/B) of 2004

Manoj Kumar and others
Vs.
State of Uttaranchal and another
AND
Civil W.P. No. 480/2004 (M/B)
Rajiv Berry and others
Vs
State of Uttaranchal and another

Date of decision: 18th November, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar,

Hon'ble Mr. Justice Irshad Hussain, J.

- Whether the order/judgment should the be Sent for reporters for reporting? **(Yes)**

- Whether the report be allowed to See the judgment? **(Yes)**

ISB

In the High Court of Uttaranchal, at Nainital.

Civil Writ Petition No. 468/2004 (M/B)

Manoj Kumar and others …….Petitioners.

Vs.

State of Uttaranchal and another. ……. Respondents.

Sri Alok Singh, Senior Advocate assisted by
Sri Gopal Narain, learned counsel for the petitioners.

Sri Sudhansu Dhulia, learned Senior Advocate, and
Sri K.P. Upadhyay (Brief Holder), learned counsel
for the petitioners.

AND

Civil Writ Petition No. 480/2004(M/B)

Rajiv Berry and others …….. Petitioners.

Vs.

State of Uttaranchal and another … Respondents.

Sri L.P. Naithani, learned Senior assisted by
Sri Ramji Srivastava, learned counsel for the petitioners.

Sri Sudhansu Dhulia, learned Senior Advocate, and
Sri K.P. Upadhyay (Brief Holder), learned counsel
for the respondents.

Dated: 18-11-2004

Coram: Hon'ble V.S. Sirpurkar, C.J.
Hon'ble Irshad Hussain, J.

Per: (Hon'ble Irshad Hussain, J.)

These writ petition under Article 226 of the Constitution of India take exception to the action of the State Government invoking the urgency clause made Section 17(4) of the Land Acquisition Act (for short 'Act') while issuing the notification under Section 4(1) of the 'Act' on 24.5.2003 thereby notifying that an area measuring 0.2000 hectare of land of the petitioners consisting of plot Khasra Nos. 1 to 10, 13 to 25, 27, 29, to 35, 38 to 45, 48 to 54, 62 to 82, 84 to 90, 92, 93, 95 to 97, 139, 86/179, 91/181 situate in the central Dehradun is urgently required for widening of Eucalyptus Road of the said town and also the declaration under Section 16 of the 'Act' made on 30-4-2004 in the that regard.

2- Challenge to the above action of the State Government is mainly, inter alia, on the grounds that the land sought to be acquired is 'Abadi' land and on it exist residential and commercial constructions; that the inquiry under Section 5(A) of the 'Act' has been dispensed with without any cogent reason as there was no relevant material available before the State Authorities for their subjective satisfaction to invoke the urgency clause; that there is no material on record to justify that widening of Eucalypts Road is essential; that the land of one side of the Eucalyptus Road is only being acquired leaving the land of the other side of the road thereby resorting to discrimination to the detriment of the petitioners and that the action of the State Government is vitiated by malafides and colorable exercise of power.

3- In the counter affidavit the stand taken by the respondents is that after creation of Uttaranchal as a new State and Dehradun being declared as a provisional capital of the State it has become necessary that certain development and construction works including widening of the existing roads to cope up with the alarming increase in motor vehicles in Dehradun and its fall out in the increase in number of accidents be urgently undertaken; that the State Government and its various agencies and departments and the authorities are constantly working and making endeavour in that direction so that the most important town of the State can bear the load of the provisional capital; that the main road in the city is known as Rajpur Road and it runs through the main city and the Secretariat of the provisional capital is situate on Rajpur Road and between Rajpur Road and Subhash Road; that Subhash Road is also one of the busiest road of Dehradun city; that there is a road which connects Subhash Road to Rajpur Road and which runs adjacent to the Secretariat building is know as Eucalypts Road; That the Eucalypts Road is presently only seven meters wide and due to the heavy rush of large number of motor vehicles etc. traffic jam on it is a very common feature; that this Road serves as a diversion road for people

who come from Mussorrie and want to reach straightaway on the Haridwar Road to reach their destinations in Haridwar and elsewhere; that this Road is also connected to East Canal Road and then to the main Haridwar Road but due to heavy traffic congestion people are forced to go into the main city and travel to Clock Tower and then take another road which run through the busy market and city causing once again not only inconvenience to the people but traffic jams and congestion and that considering the immediate need to have the said Eucalyptus Road widened the urgency clause under Section 17 of the 'Act' was invoked dispensing with the provision of Section 5 (A) of the 'Act' and notification was accordingly issued.

4- The respondents also denied the other allegations of the petitioners and urged that the buildings are not constructed on the land which is acquired for widening of the road and that no discrimination has been made in selecting the site for widening of the Eucalyptus Road.

5- Learned Senior Counsel Sri L.P. Naithani and Sri Alok Singh appearing on behalf of the petitioners strenuously urged that the action of the State Government invoking urgency clause stand vitiated by he fact that there is nothing on record to show that there was relevant material available to the State Authority for their subjective satisfaction that the land is urgently required for widening of the Eucalyptus Road and further that there is nothing to show that the petitioners were not discriminated in taking the decision to acquire the land on one side of the existing Eucalyptus Road while sparing the land owners of the order side of the said road. They placed reliance on the following reported decisions:-

(i) Om Prakash and others vs. State of U.P. and others; (1998) 6 Supreme Court Cases – 1,

(ii) Union of India others vs. Kishan Lal Arneja and others; 2004 (5) Supreme-366,

(iii) Union of India and others vs. Mukesh Hans etc; 2004 A.I.R. SCW 5081.

6- On the other hand Sri S. Dhulia, learned Senior Advocate appearing on behalf of the respondents broadly submitted that there was neither any malafides nor colorable exercise of power in invoking urgency clause as there was relevant material available to indicate that the widening of the important Eucalyptus Road of the provisional capital of the State was urgently needed for smooth traffic, for avoidance of traffic jams and to make the road more workable as it is an important link road which connects two main roads in Dehradun namely the Subhash Road and the Rajpur Road. He also submitted that widening of the road on one side is needed for the reason that on the other side of the road residential houses are in existence in most of the plots whereas the land which is being acquired has no residential or commercial building and therefore, it is not a case of discrimination in acquiring the land of the petitioners. Learned counsel also placed reliance on certain reported decisions, relevant of which may be referred as and when necessary while considering the merits herein of the respective contentions of the parties.

7- From the case as set up in the petitions and in view of the submission made by the counsel for the parties, the following points are framed for determination in these petitions:-

(i) whether the action invoking urgency clause under Section 17(4) of the ‘Act was based on application of mind to arrive to a subjective satisfaction from the relevant material available before the State Authorities?.

(ii) Where the action of State Authorities does not stand vitiated by reason of delay of about 11 months between publication of declaration under Section 4(1) read with Section 17 and publication of declaration under Section 6 of the ‘Act?

(iii) Whether the State Authorities have not discriminated against the petitioners in taking the decision of widening of the road on one side where the land of the petitioners is situated?.

8- Our answer to all these three questions is in the affirmative.

Point Nos. (i) and (ii): It is not in dispute that Dehradun is the provisional capital of State of Uttaranchal, which came into existences on 9th November, 2000. Dehradun city is gateway to Mussorrie, a well known tourist station and tourists from all over India and also foreigners visited there to spend their holidays. It is also very-well known fact that Dehradun is a well established education centre of the State and occupy a special and prominent place in the geographical map of the State of Uttaranchal. After creation of the State of Uttaranchal, there has been considerable increase in population, business and other commercial activities. Eucalyptus Road is one of the main road of the city and its location with reference to other connecting roads of the city namely Rajpur Road and Subhash Road where the Secretariat is also situate, has been refereed to in the earlier part of the judgment. There can be no doubt that this road, on account of increase in number of motor vehicles as well as increase of population and increase in the business activities, has become the busiest road of the town, as a result of which traffic jams has become a common feature as asserted to in the counter affidavit on behalf of ht respondents. At the bar the learned senior counsel for the petitioners could not dispose this state of affair and we can not lose sight of the fact that with the setting up of provisional capital of the State in Dehradun the need to widen this important roads is pressing, genuine and bonafide.

9- In the written submission made on behalf of the respondents reference has been made to a report of the Consultancy Agency known as ‘ RITES LTD.’ which undertook the study on behalf of Mussorrie – Dehradun Development Authority and collected datas indicating an increase of 17% in car/jeep/van; 10% in scooter and motor-cycle; 25% in taxies and 28% in Auto/Tempos in the last ten years in the town Dehradun. Large increase was noted

in accidents between year 1999-2003 as per Annexure No. 1 of the written submissions. Even without taking into account the figures as collected by the Agency we also can take judicial notice of the fact that an over all increase in the percentage of the motor vehicles has been there at national level and Dehradun, an important town of the state, beside being Provisional capital of the State, has also lately shown a large upward trend in the number of motor vehicles, population, business and commercial activities leading to traffic congestion on its main roads including the Eucalyptus Road. The assertions to this effect made in the counter affidavit on behalf of the respondents have not been refuted on behalf of the petitioners. We also can not lose sight of the ground-reality that widening of the important and main road of the provisional capital, is necessary to ease-out traffic congestion and therefore the averment made in the counter affidavit of Sri N.S. Sharma, Assistant Engineer, P.W.D., Provincial Division, Dehradun that the authorities concerned have therefore taken a considered decision to acquire part of the land adjacent to the Eucalyptus Road for widening of the same need to be accepted as correct. Considering this aspect of the matter we do not find any merit in the argument advanced on behalf of the petitioners that the State Authorities took the decision that the land was urgently needed for widening of the road without application the mind and that there was no relevant material available for their subjective satisfaction in that regard.

10- In regard to the reported cases of the Apex Court cited on behalf of the petitioners it need to be stated that the ratio of the decisions in all the three cases was that action invoking urgency clause by the State Government need to be based on subjective satisfaction of the State Authorities on relevant material available and if it is not so the non-application of mind will vitiate the action. It is well settled that while invoking the urgency clause it is not necessary that the relevant material on which the subjective satisfaction of the State Authorities is based is required to be stated or disclosed in the notification

under Section 4(1) read with Section 17(4) of the 'Act'. In fact when the action is challenged the Court must be satisfied that there was material available to base the subjective satisfaction by the State Authorities to invoked the urgency clause. As stated above considering the peculiar situation of the city of Dehradun and the same being the provisional capital of the State the factors as discussed above were the relevant material available to arrive to a subjective satisfaction by the State Authorities that the land is urgently needed for widening of the main Eucalyptus Road of the city. In other words the decision taken by the State Authorities to dispense with the inquiry as contemplated under Section 5(A) of the 'Act' and to invoke urgency clause was not vitiated by malafides or colorable exercise of the power and in the circumstances of the case the reported decisions of the Apex Court do not help of the petitioners.

11- As stated above there has been a delay of about 11 months between publication of the notification under Section 4(1) read with Section 17(4) of the 'Act' and the publication of a declaration under Section 6 of the 'Act' and referring to this delay it was argued on behalf of the petitioners that in fact there was no urgency to acquire the land for widening of the road and that in a situation like this the inquiry as contemplated under Section 5(A) of the 'Act' could not have been dispensed with and for that reason the action invoking urgency clause stand vitiated by malafides. To meet this argument Sri Dhulia, learned Senior Counsel for the respondent placed reliance on the decision of the Apex Court in the matter of State U.P. Vs. Pista Devi and others WITH Meerut Development Authority, Meerut vs. Smt. Pista Devi and others; A.I.R. (1986) 4 Supreme Court Case 251 and submitted that there being no malafides on the part of the Government or its Officers the delay itself will not render the action invoking urgency clause as illegal. As is evident from the record there was no allegation of malafie on the part of either Government or any of its Officer and therefore in the face of the facts of the case the above delay of 11 months can not constitute a ground to claim

that the action of the State Government taken under Section 17(4) of the 'Act' is improper and illegal. In the reported case delay of one year between publication of notification under Section 4 and publication and declaration under Section 6 of the 'Act' was not taken to render the decision of the State Government invoking urgency clause as illegal. In our view the reported decision rebut the submission of the petitioners and the action of the State Government doses not stand vitiated.

Point No. (iii):- Learned counsel on behalf of the petitioners submitted that if widening of Eucalyptus Road is necessary the land situated on both the sides of the road should have been acquired and that the action of the State Government in acquiring the land of the petitioners only and which lie on one side of the road is discriminatory. On behalf of the respondents site plan of the proposed widening of Eucalyptus Road has been furnished along with photographs of he existing road. These are Annexure 5 and 6 to the written submission on record. The site plan clearly reveal that the other side of the Eucalyptus Road has been spared in view of the fact that the residential and commercial buildings are situate on that side of the road whereas on the other side of the road only one residential building of Mohd. Islam in the far east is situated and in the remaining part of the land sought to be acquired no building or construction exist. Considering this there can be no doubt that the State Government has rightly taken a decision to widen the road from its one side and to acquire the land on that side of the road instead of having it widened on both the sides. There is nothing on record to contest the factual position as shown in the sketch map and considering this we are not inclined to accept the argument that the State Government has taken a discriminatory action in acquiring the land of the petitioners only while sparing the property owners on the other side of the Eucalyptus Road.

12- For the reasons aforesaid both the writ petitions lack merit and are dismissed. No order as to costs. Interim orders of status quo are vacated. (Writ Petition N.480/2004 (M/B) in

regard to the prayer for quashing the another notification dated 5.5.2004 was disposed of per order dated 30-10-2004).

(Irshad Hussain J.) **(V.S. Sirpurkar, C.J.)**

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